Kilobar" would have appeared. Instead of which in 1AB10 only the words "Singapore Gold" appear. From the Trading Terms (1AB8-9) it is clear that the Gold Exchange trades in four different types of gold namely, Singapore gold, N.Y. Comex gold, Hong Kong gold and Loco London gold. The lots or units for trading in Singapore gold under the New Bye-Laws (1AB27) is 100 oz. or kilobar as set out above. The words "Singapore gold" are not defined in the New Bye-Laws. This being so Contract 1AB10 is ambiguous and could mean either 100 oz. or kilobar. The plaintiff believed it to mean kilobar as he was only dealing in kilobars and his mind was not directed to a 100 oz. contract. The first time the plaintiff became aware that "Singapore gold" meant 1 lot 100 oz. was when Lam telephone him on January 29, 1982 and when he told Lam that he had on October 14, 1982 bought 1 lot kilobar and not 1 lot 100 oz. The defendants are now setting up the ambiguity occasioned by them to extricate themselves from the claim of the plaintiff.

For these reasons I give judgment for the plaintiff in the sum claimed *i.e.* S$11,518.15 and costs. As claimed by counsel for the plaintiff there will be interest at the rate of 8% from date of Writ up till date of judgment.

Claim allowed.

Solicitors: *Hilborne & Co.; Allen & Gledhill.*

LIM PUI WHO & ORS. v. OFFICIAL ASSIGNEE IN BANKRUPTCY FOR LIM BOO SIONG

[O.C.J. (Rajah J.) April 15, 1985]

[Singapore – Originating Summons No. 766 of 1983]

Conveyancing – Purchase of land – Joint tenancy – Tenancy in common – Indenture – Deed of Assignment – Deed of Partition – Validity.

Bankruptcy – Joint tenant becoming bankrupt – Official Assignee as trustee in bankruptcy – Defendant refusing to give effect to Deed of Partition.

The subject matters of this application are lands known as Lots 11-311 and 11-456 of T.S. XVII. The long history of this case goes back to 1957, when by an agreement dated June 22, 1957, Lim Pui Who (1st plaintiff), Kuah Chwee Geok (2nd plaintiff), Lim Boo Siong (represented by the Official Assignee in Bankruptcy) and two others agreed to buy the said lands from a company for $190,000.00. These five purchasers agreed, *inter alia*, among themselves as to the areas to be used and occupied by each of them and the mode in which each of their shares of the purchase price is to be ascertained. By an Indenture dated October 25, 1957 (First Indenture), the Company conveyed the said lands to hold the same unto the said five purchasers in fee simple as joint tenants. By an Indenture dated February 20, 1959 (Second Indenture) made between the five joint tenants (Grantors) under the First Indenture, the Grantors conveyed to certain Grantees the said lands to hold the same unto the Grantees in fee simple as joint tenants. An application was made to court by Originating Summons 389 of 1975 for rectification by deleting the words "Joint Tenants" in the Deed of Conveyance dated February 20, 1959 (registered in Vol. 1334 No. 121) and substituting therefor the words "Tenants in Common". This application was dismissed by the learned Chief Justice on November 28, 1975, thereby disposing off the issue of joint tenancy.

The issue for decision is whether the Deed of Partition dated February 14, 1976 and registered in Vol. 2091 No. 174 is valid and effectual. This Deed was signed by the four surviving joint tenants (Low Kee having died on June 17, 1970) together with Low Tiau Siong and Low Siong Beng (executors of the Estate of Low Kee) concerning the taking by each of the buildings and lands in question. On April 1, 1981, the defendant, as trustee in Bankruptcy for the bankrupt Lim Boo Siong, assigned No. 12 Penhas Road to Wei Wah Company Pte Ltd for $236,000.00. As the defendant refuses to give full effect to the Deed of Partition of February 14, 1976, these proceedings have become necessary.

Held, in regard to the orders of the learned Judge in Originating Summons 19 of 1978 concerning the validity of the Deed of Partition: (1) the Deed of Partition is a valid

(2) there will be an order declaring the Deed to be valid and effectual with costs to the plaintiffs.

ORIGINATING SUMMONS.

Cheong Yuen Hee (*Tan Seow Peer (Miss)* with him) for the plaintiffs.

Anamah Tan (Mrs.) for the Official Assignee/ defendant.

Cur. Adv. Vult.

Rajah J. : In this Originating Summons the plaintiffs are:

(1) Lim Pui Who;

(2) Kuah Chwee Geok;

(3) Lim Thiam Chwee, sole Executor of the Estate of Lim Poon Chong @ Lim Chong;

(4) Low Tiau Siong and Low Siong Beng, the Executors of the estate of Low Kee;

and the defendant is the Official Assignee in bank-

ruptcy for Lim Boo Siong. The plaintiffs seek the following declarations:

1. That the Deed of Partition dated February 14, 1976 and registered in Volume 2091 No. 174 is valid and effectual.

2. In the alternative, the parties, namely Lim Pui Who, Kuah Chwee Geok, Low Kee, Lim Poon Chong @ Lim Chong and Lim Boo Siong are in equity tenants-in-common under the Conveyance dated February 20, 1959 and registered as Volume 1334 Folio 121 notwithstanding that in the said Conveyance, they are described as holding the said land as joint tenants.

3. In the further alternative, the parties have as a result of a course of dealing with the said land, severed the joint tenancy and have become tenants-in-common.

4. Costs and such other relief as the Court may deem just.

The Background

(1) By an Agreement dated June 22, 1957 Lim Pui Who, Kuah Chwee Geok, Lim Boo Siong, Yee Swee Pew and Lim Cheng Teng agreed to purchase from Sterling Land & Investment Company Limited (the Company) Lots 11-311 and 11-456 of T.S. XVII (the said lands), the subject matter of this application, for the sum of $190,000/-. Subsequently, these five purchasers entered into an Agreement, dated July 18, 1957, amongst themselves in regard to the said lands and it sets out the areas to be used and occupied by each of them and the mode in which each of their share of the purchase price of $190,000/- is to be ascertained. It also made provision as to what was to happen in the event of any of the five purchasers not paying his share on or before completion of the said sale.

(2) By an Indenture dated October 25, 1957 (First Indenture) the Company in pursuance of the said Sale Agreement conveyed the said lands to hold the same unto the said five Purchasers in fee simple as *joint tenants* (emphasis mine).

(3) By an Indenture of Mortgage dated October 26, 1957 the said five Purchasers conveyed the said lands to one Lee Choon Seng to secure payment of the principal sum of $65,000/- with interest thereon.

(4) On September 2, 1958 the Singapore Improvement Trust under section 61 of the Singapore Improvement Ordinance (Cap. 259 of the 1955 Edition) approved a layout or sub-division of the said lands as shown in the plan marked N1 in S.I.T. 935/52 and marked Lots 1 to 8 (inclusive).

(5) An Agreement dated October 17, 1958 supplemental to the aforesaid Agreement of July 18, 1957, was entered into between the said five joint tenants wherein it was agreed:

(1) that the aforesaid Agreement dated July 18, 1957 was to be treated as at an end;

(2) that they should partition the said lands;

(3) that the aforesaid Lots Nos. 1, 2, 3, 4, 5 and 8 shall belong to the said Kuah Chwee Hock, the said Lim Boo Siong and the said Lim Cheng Teng in equal shares;

(4) that aforesaid Lots 6 and 7 shall belong to the said Yee Swee Pew and Lim Pui Who respectively;

(5) that the principal sum of $65,000/- payable under the aforesaid Mortgage shall be paid in manner following:

(a) $15,000/- thereof by the said Lim Boo Siong;

(b) $10,000/- thereof by the said Kuah Chwee Geok;

(c) $10,000/- thereof by the said Lim Cheng Teng;

(d) $23,000/- thereof by the said Yee Swee Pew and $7,000/- thereof by the said Lim Pui Who; and

(e) $7,000/- thereof by the said Lim Pui Who.

The Agreement went on to say:

"The parties hereto shall do all such acts and things as may be necessary or expedient for the purposes of giving effect to this agreement and to sign, execute and deliver all such deeds and documents in connexion therewith.

Any one of the parties hereto shall be at liberty to sell transfer convey or assign to any person or persons his share right title and interest in the said lands and premises and his rights interests benefits and advantages under this agreement." (Exhibit 15 of Further Affidavit of Kuah Chwee Geok filed on 28.12.84)."

(6) By an Agreement dated October 24, 1958 between the said Yee Swee Pew (one of the said five joint tenants) and one Low Kee, the said Yee Swee Pew agreed to sell and the said Low Kee to buy "all that the share right title interest and estate

whatsoever of the Vendor in the said lands and all the rights interests and benefits and advantages of the Vendor of and in the said Agreement to Partition dated October 17, 1958 at the price of $45,000/-." The sale was subject to vacant possession of the said Lot 6 being given to the said Low Kee.

(7) On November 15, 1958 by an Indenture of Statutory Reconveyance the said Lee Choon Seng (mortgagee) reconveyed the said lands to the five joint tenants.

(8) By an Indenture dated February 20, 1959, registered in Volume 1334 No. 121, (Second Indenture) made between the five joint tenants under the First Indenture, referred to therein as the Grantors of the one part and the said Lim Pui Who, the said Lim Boo Siong, the said Kuah Chwee Geok, one Lim Poon Chong also known as Lim Chong and the said Low Kee referred to therein as the Grantees, the Grantors having acknowledged that the Grantees were then entitled in equity to the said lands and on the request of the Grantees to have conveyed to them the said lands, conveyed the said lands to the Grantees to hold the same unto the Grantees in fee simple *as joint tenants* (emphasis mine). It is to be noted that two of the five said joint tenants under the Second Indenture, namely the said Lim Poon Chong also known as Lim Chong and Low Kee had prior to the date of the Second Indenture bought all the right title and interest in the said lands of the said Lim Cheng Teng and Yee Swee Pew, respectively.

(9) On May 20, 1963 the said Lim Poon Chong, the said Lim Boo Siong and the said Kuah Chwee Geok, three of the five joint tenants under the Second Indenture, entered into an agreement in Chinese wherein it was stated that the three of them had jointly formed a company and had jointly bought a piece of land situated at the junction of Lavender Street and Penhas Road, Singapore presumably Lot 11-456 T.S. XVII and that as the three of them had need to utilise the land they intended to divide it and individually put up buildings thereon. It is not disputed that any such company was ever formed.

(10) On February 9, 1966 the said Lim Poon Chong, the said Lim Boo Siong and the said Kuah Chwee Geok entered into a Building Contract with Hup Lee Seng Construction Co. (Pte.) Ltd. to erect a four-storey Workshop and Flats, under the direction of Ee Hoon Chwee & Co, Architects, at the corner of Penhas Road and Lavender Street (Lot 11-456 T.S. XVII) for the payment of $169,000/-. It would appear that this contract did not get under way, nor did any building operations take place. The Building Contract was allowed to lapse.

(11) The said Low Kee died on June 17, 1970 and Probate of his Will was granted to Low Tiau Siong and Low Siong Beng on February 12, 1971, as two of the executors named in his Will.

(12) On April 13, 1972 seven persons entered into an Agreement whereby they purported to deal with the right title and interest in the said lands. It is to be noted that only one of them namely Lim Pui Who had any right title or interest in the said lands.

(13) A second Building Agreement was entered into on December 30, 1972 between the said Kuah Chwee Goek, the said Lim Poon Chong, the said Lim Boo Siong, the said Low Kee (then deceased) and one Low Boon Ek (thereinafter called "The Proprietor") and the said Hup Lee Seng Construction Co. (Pte.) Ltd. to erect under the direction of Messrs Architects United a four-storey general industrial cum residential building for the payment of $642,950/- at Penhas Road on Lot 11-456 T.S. XVII.

(14) On November 20, 1975 the said Lim Pui Who, Lim Boo Siong, Kuah Chwee Geok, and Lim Poon Chong also known as Lim Chong, four of the joint tenants under the Second Indenture (the fifth joint tenant Low Kee having died on June 17, 1970), applied by Originating Summons 389 of 1975 for an Order that the Deed of Conveyance dated February 20, 1959 (Registered in Volume 1334 No. 121) be rectified by deleting the words "Joint Tenants" appearing at the end of the habendum of the said deed substituting therefor the words "Tenants in Common". In their joint affidavit in support of the said Originating Summons they said, *inter alia,*

> "We are, together with Low Kee of No. 174, MacPherson Road, Singapore, Merchant, since deceased, the Grantees and beneficial owners of the properties situate and known as Lot 11-311 and Lot 11-456, T.S. XVII. These properties were originally purchased in the names of Lim Pui Who, Lim Boo Siong, Kuah Chwee Geok, Lim Cheng Teng also known as Lim Cheng Tang and Yee Swee Pew jointly and registered as joint tenants. There was at the material time a break in communication between ourselves and our then solicitors, Messrs Braddell Brothers. By an error, the title deeds were prepared in such a manner as to convey the properties to ourselves both in the first transaction on October 25, 1957 and in the Conveyance of February 20,

1959, in which were stated that the ownership of the properties by the persons named therein held the same as joint tenants.

The actual intention of the parties were to purchase the property and hold the same as tenants-in-common."

and exhibited to their joint affidavit the aforesaid Agreement dated April 13, 1972 which is therein referred to as an agreement for partition. Para. 8 of the said joint affidavit reads:

"The parties finally decided to partition their interests in business as well as in the vested properties. Accordingly, by an agreement for partition of their respective interests, the parties agreed, amongst other things, too divide the properties held by them into interest in each house erected on the land instead of remaining as owners of undivided shares as in the deeds."

(15) The Originating Summons came on for hearing before the learned Chief Justice on November 28, 1975 when after hearing the solicitor for the applicants he dismissed the application in spite of their joint affidavit and the said purported Agreement for Partition and made no order on the Summons.

(16) The four surviving joint tenants under the Second Indenture together with Low Tiau Siong and Low Siong Beng, the executors of the Estate of Low Kee, then signed a Deed of Partition on February 14, 1976 (Reg. Vol 2091 folio 174 on August 17, 1977). The document *inter alia* reads:

"1. The First Party (Lim Pui Who) shall take in severalty the land and building known as No. 20/A/B/C Penhas Road, Singapore;

2. The Second Party (Lim Boo Siong) shall take in severalty the land and buildings known as No. 12 Penhas Road, Singapore and Nos. 51/A/B/C Lavender Street, Singapore;

3. The Third Party (Kuah Chwee Geok) shall take in severalty the land and buildings known as No. 14, Penhas Road, Singapore and Nos 53/A/B/C, Lavender Street, Singapore;

4. The Fourth Party (Low Tiau Siong and Low Siong Beng) shall take in severalty the land and buildings known as No 16/A/B/C and Nos 18/A/B/C Penhas Road, Singapore as joint tenants;

5. The Fifth Party (Lim Chong alias Lim Poon Chong) shall take in severalty the land and buildings known as Nos 55/A/B/C and Nos 57/A/B/C, Lavender Street, Singapore."

(17) Lim Poon Chong also known as Lim Chong referred to as the Fifth Party in the Deed of Partition died testate on or about February 18, 1976 and a Grant of Probate was issued on August 20, 1983 to Lim Thiam Chwee, the sole Executor.

(18) On September 4, 1976, by virtue of a Deed of Assignment the said Lim Boo Siong as beneficial owner assigned all his right title and interest in No. 51/A/B/C Lavender Street to the Bank of America National Trust & Savings Association (the Bank of America) in consideration of the Bank granting his firm banking facilities. This was done without the knowledge and/or consent of the plaintiffs.

(19) On January 17, 1978, the Bank applied to Court by way of Originating Summons No. 19 of 1978 (the Plaintiff being the Bank and Lim Boo Siong trading as Chop Siong Lee being the Defendant) for, among other things, the following declarations:

"(a) that under and by virtue of the said Deed of Assignment dated September 4, 1976 the Bank is entitled to be considered as being the equitable mortgagee of the said land and buildings erected thereon comprised in the said Deed of Assignment (as amended);

(b) that the said equitable charge may be enforced by sale by public auction or by private treaty and that the Bank be authorised to execute an assurance of the mortgaged property (as amended)."

(20) On March 31, 1978 the said Lim Boo Siong was adjudicated a bankrupt.

(21) At the hearing of the Originating Summons, the validity of the said Deed of Partition was put in issue by the Official Assignee. On August 28, 1978 the Court made an order in terms of the amended application.

(22) Pursuant to the said Order of Court dated August 28, 1978 the above property was assigned by the Bank to Leck Eng Co. Pte. Ltd. for a consideration of $435,000.00 under a Deed of Assignment dated October 15, 1979.

On April 1, 1981, the Defendant, as trustee in Bankruptcy for the bankrupt, Lim Boo Siong, assigned No. 12 Penhas Road to Wei Wah Co. Pte. Ltd. for a consideration of $236,000.00. These proceedings have now become necessary as the Defendant refuses to give full effect to the said Deed of Partition.

Plaintiffs' Case

The first and second plaintiffs are two of the five joint tenants under the Second Indenture (February 20, 1959); the third plaintiff is Lim Thiam Chwee, the sole proving executor of the will of Lim Poon Chong @ Lim Chong, deceased, one of the five joint tenants; and the fourth plaintiffs

are Low Tiau Siong and Low Siong Beng, the proving executors of the will of Low Kee, deceased, another of the five joint tenants. Lim Boo Siong is the fifth joint tenant and he was made a bankrupt on March 31, 1978. The defendant is the Official Assignee in Bankruptcy for him.

Plaintiffs' counsel Mr. Cheong in his submission said that there were two issues before the Court:-

(1) whether the Indenture dated February 20, 1959 created a joint tenancy in the said lands as between the plaintiffs and the bankrupt Lim Boo Siong, and

(2) if there was a joint tenancy was there a severance of the joint tenancy and whether such severance took place before June 17, 1970, the date of death of Low Kee.

Issue (1) – Whether Indenture of February 20, 1959 created a joint tenancy or a tenancy-in-common.

On this issue counsel submitted that the said Indenture does not in effect create a joint tenancy between the five owners because the circumstances surrounding the execution of this Indenture indicate that there was a mistake in describing them as joint owners whereas they should have been described as tenants-in-common. He enumerated the following as the circumstances:

(1) The Agreement dated July 18, 1957. See paragraph 1 hereof.

(2) The Agreement dated October 17, 1958 supplemental to the Agreement of July 18, 1957. See paragraph 5 hereof.

(3) The Agreement dated October 24, 1958. See paragraph 6 hereof.

(4) In the instant case the five co-owners were either partners or business men coming together for a venture and that therefore the presumption here is that they hold the land as tenants-in-common.

In regard to this submission without going into its merits or otherwise I need only refer to Originating Summons No. 389 of 1975 taken out by four of the co-owners on November 20, 1975 for an order that the Indenture dated February 20, 1959 be rectified by deleting the words "Joint Tenants" and substituting thereof the words "Tenants-in common" and to the learned Chief Justice's order on November 28, 1975 dismissing the application, when the very same arguments now being adduced before me were adduced before him (see paragraphs 14 and 15 hereof). This therefore should put to rest this aspect of the plaintiffs' case.

Issue 2 – Whether there has been a severance of the joint tenancy.

The first event of significance on this issue after the learned Chief Justice's decision in O.S. No. 389 of 1975 was the execution of the Deed of Partition dated February 14, 1976 referred to in paragraph 16 hereof. And the other event of significance is the execution of the Deed of Assignment dated September 4, 1976 by the said Lim Boo Siong in favour of the Bank of America of all his right title and interest in No. 51/A/B/C Lavender Street which had been erected on part of the said lands (see paragraph 18 hereof). In O.S. No. 19 of 1978 the Bank of America obtained on August 28, 1978 the following orders:

(a) that under and by virtue of the said Deed of Assignment the Bank of America is entitled to be considered as being the equitable mortgagee of the said lands and buildings erected thereon as comprised in the said Deed of Assignment;

(b) that the said equitable charge may be enforced by sale either by public auction or private treaty and that the Bank be authorised to execute an assurance of the mortgaged property.

At the hearing of the Originating Summons the validity of the said Deed of Partition had been put in issue by the Official Assignee representing the bankrupt Lim Boo Siong. So that the present position then would be that both the Deed of Partition dated February 14, 1976 and the Deed of Assignment dated September 4, 1976 have been found by the Court to be valid and enforceable documents. I respectfully concur with the orders made by the learned Judge in O.S. 19 of 1978 and declare that the Deed of Partition is a valid one. On the number of ways in which a joint tenancy may be determined (see *Cheshire and Burn's* Modern Law of Real Property, 13th edn., pages 211 to 214).

In the event there will be an order-in-terms on Prayer 1 and no order on the alternate prayers. Costs to the plaintiffs.

Order accordingly.

Solicitors: *Boey Ng & Wan; Ann Tan & Associates.*